

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

FIL

WARREN DURHAM JR.,
Plaintiff
V.
CITY AND COUNTY OF ERIE,
ET AL. Defendants.

) C.A. No. 04-297 ERIE
)
) District Judge McLaughlin
) Magistrate Judge Baxter

06 MAY 17

CLERK
U.S. DISTRICT

RESPONSE TO MOTION FOR SANCTIONS

COMES NOW, Warren Durham Jr., Plaintiff and files his response to Defendant Tackett's Motion for Sanctions Against Plaintiff, and states as follows:

1. On May 5, 2006, the Plaintiff received a "Notice To Take Deposition" from Edmond R. Joyal, Esquire dated May 1, 2006. The Notice notified the Plaintiff that on May 8, 2006 at 10:00 a.m. at Knox McLaughlin Gornall & Sennett, counsel for Defendants, will take Plaintiff's deposition upon oral examination.
2. In accordance with the provisions of FRAP 30(b), a party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action.
3. The Plaintiff asserts that three-days Notice is not reasonable. The Plaintiff had no prior notice or request to attend the deposition.
4. On May 8, 2006 the Plaintiff was at Hillcrest Hospital from 7:30 a.m. until 7:00 p.m. with his brother, Dwayne Durham for surgery. The surgery was performed by Doctor Dorsky. His office number is (440) 449-1101.
5. As a courtesy, any Attorney should first inquire whether a party is available before scheduling an event. It is a real possibility that other important events were already planned.
6. According to Kemal Alexander Mericli, Esquire, Discovery ends May 10, 2006 with Plaintiff's pretrial statement due May 19, 2006. The Plaintiff was not informed by the Court that a Discovery schedule had been set forth in this case.

7. The Plaintiff is requesting proper notification of all scheduling matters before the Court in this case.

WHEREFORE, it is respectfully requested that Defendant's motion for sanctions be denied.

Respectfully submitted,


WARREN DURHAM JR.

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WARREN DURHAM JR.,) C.A. No. 04-297 ERIE
Plaintiff)
V.) District Judge McLaughlin
Defendants.) Magistrate Judge Baxter

CITY AND COUNTY OF ERIE,
ET AL. Defendants.

CERTIFICATE OF SERVICE

I, Warren Durham Jr., hereby certify that I am this day serving a true and correct copy of the foregoing "Response To Motion For Sanctions" upon the persons named below by FIRST CLASS MAIL, postage prepaid, to:

Mark E. Mioduszewski,Esq
120 West Tenth Street
Erie, Pa. 16501

Edmond R. Joyal,Esq.
975 Two Chatham Center
Pittsburgh, Pa. 15219

Kemal Alexander Mericli,Esq.
564 Forbes Avenue
Pittsburgh, Pa. 15219

A. Taylor Williams,Esq.
1515 Market Street, Suite 1414
Philadelphia, Pa. 19102



WARREN DURHAM JR.
12119 MATHERSON AVE.
CLEVELAND, OH. 44135

DATED: 5/13/06